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Federal Communications Commission

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FCC 92-215

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

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CC Docket No. 92-117

DISPATCHED BY

In the Matter of

Amendment to Section 1.773 of the
Commission's Rules Regarding
Pleading Cycle for Petitions
Against Tariff Filings Made on
14 Days' Notice

NOTICE OF PROPOSED RULEMAKING

Adopted: May 14, 1992;

Released: June 1, 1992

Comment Date: July 23, 1992

Reply Comment Date: August 7, 1992

By the Commission:

I. INTRODUCTION

1. By this Notice, the Commission proposes to adjust the pleading cycle for petitions seeking investigation, suspension, or rejection of tariff filings made on 14 days' notice. In order to allow the Commission time to evaluate fully arguments against the lawfulness of these tariffs, we tentatively conclude that it is necessary to amend Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, to require that petitions be filed within six calendar days after the date of 14-day tariff filings and that subsequent replies be filed within three calendar days after service of the petition. Because of this short pleading cycle, we also tentatively conclude that all pleadings must be personally served on the parties involved in the tariff proceeding.

II. BACKGROUND

2. In several recent proceedings, the Commission has adopted streamlined review for a number of different types of tariff filings. For example, under price cap regulation, AT&T Communications (AT&T) and certain local ex-

change carriers (LECs) may file below-cap, within-band tariffs on 14 days' notice.¹ These tariffs are presumed lawful if the rate changes comply with Commission-mandated band limitations that produce an Actual Price Index (API) for the relevant basket no greater than the applicable Price Cap Index (PCI). In addition, the Commission recently amended the rules to exclude AT&T's business services from price cap regulation and to streamline tariff review of these services.² Pursuant to this Order, AT&T may file tariffs on 14 days' notice for most of its business services. Finally, non-dominant carriers are also allowed to file tariffs on 14 days' notice.³ In allowing streamlined review of these various tariffs, the Commission has emphasized that such review is not equivalent to automatic acceptance of a rate or other tariff change; petitioners still have the opportunity to petition tariff filings and address issues such as discrimination.⁴

III. DISCUSSION

3. Pursuant to Section 1.773(a)(2)(i) of the Commission's Rules, 47 C.F.R. § 1.773(a)(2)(i), petitions against a new tariff filed on less than 30 days' notice must be filed and served within seven calendar days of the tariff filing. Under Section 1.773(b)(1)(i), 47 C.F.R. § 1.773(b)(1)(i), replies must be filed and served within four days after service of the petition. Intermediate holidays⁵ are counted during the seven-day period.⁶ Holidays are not counted during the four-day reply period, however, and a carrier served with a petition by mail has an additional three days to file its reply.⁷ Under our current rules, therefore, the pleading cycle for a 14-day tariff may end after the effective date of the tariff if a petition is served by mail. This affords the Commission no time to consider the arguments against a 14-day tariff filing within that notice period.

4. The Commission believes it is in the public interest to revise the pleading deadlines for 14-day tariffs by shortening the petition and reply periods by one day each and by counting intermediate holidays (as defined in Section 1.4(e)(1) of the Rules) in calculating both filing periods. We therefore propose to amend Section 1.773 of the Rules to require that petitions be filed no later than six calendar days after the date of the tariff filing and that replies be filed no later than three calendar days after service of the petition. This shortened pleading cycle will give the Commission four days to consider the pleadings received after the pleading cycle closes. Under this proposal, the Commission's rule regarding pleadings filed on a holiday is unchanged; should the date for filing the petition or reply fall on a holiday, the pleading would be due on the first succeeding business day.⁸ Similarly, plead-

¹ 47 C.F.R. § 61.58(c)(2). See also Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6822 (1990) and Erratum, 5 FCC Rcd 7664 (1990) (*LEC Price Cap Order*) (adopting 14-day filing rule for LECs), modified on recon. 6 FCC Rcd 2637 (1991), petitions for further recon. pending, appeal docketed, D.C. PSC v. FCC, No. 91-1279 (D.C. Cir. June 14, 1991); Report and Order and Second Further Notice, 4 FCC Rcd 2873, 3095-3100 (1989) and Erratum, 4 FCC Rcd 3379 (1989) (*AT&T Price Cap Order*) (adopting 14-day filing rule for AT&T), modified on recon. 6 FCC Rcd 665 (1991), appeal docketed, AT&T v. FCC, No. 91-1178 (D.C. Cir. April 15, 1991).

² Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880 (1991) (*Interexchange Order*), reconsidered in

part, Memorandum Opinion and Order, 6 FCC Rcd 7569 (1991), further reconsideration, 7 FCC Rcd 2677 (1992). AT&T's services offered to residential customers, its 800 services and analog private line services remain subject to price cap regulation.

³ See 47 C.F.R. § 61.58(b).

⁴ See, e.g., *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2697.

⁵ Section 1.4(e)(1) of the Commission's Rules, 47 C.F.R. § 1.4(e)(1), defines holidays as Saturday, Sunday, federal legal holidays, or any other day on which the Commission's offices are closed and not reopened prior to 5:30 p.m.

⁶ See 47 C.F.R. § 1.773(a)(3).

⁷ See 47 C.F.R. § 1.773(b)(2).

⁸ See 47 C.F.R. §§ 1.773(a)(2)(iii), 1.773 (b)(2).

ings responding to tariffs filed on more than 14 days' notice but less than 30 days' notice will continue to be filed pursuant to the current rules; petitions are due seven days after the tariff is filed, while replies are due four days after service of the petition.

5. Because of the short time periods involved in this revised pleading cycle, we also propose to eliminate the option to serve any party in a 14-day tariff proceeding by mail. Specifically, we would require petitions and replies to be filed with the Commission and served simultaneously upon the Chief, Common Carrier Bureau, and the Chief, Tariff Division. Each petition or reply would also be personally served on the carrier or on other parties involved. While we believe that personal service is the preferred means of delivery to other parties, we also seek comment on the advisability of allowing service by facsimile, followed by the mailing of a copy of the pleading, to parties other than the Commission.

IV. PROPOSED RULES

6. In summary, we propose to add the appropriate new subsections to Section 1.773 of the Commission's Rules to require that petitions seeking investigation, suspension, or rejection of a tariff filing made on 14 days' notice be filed within six calendar days after the date of the tariff filing; a carrier's reply to such a petition for relief from a tariff filing must be filed within three calendar days after service of the petition. We propose to count intermediate holidays (as defined by Section 1.4(e)(1) of the Rules) in calculating both the six-day and three-day periods.⁹ Additionally, to allow interested parties as much time as possible in this short pleading cycle to advance their position, we tentatively conclude that petitions and replies should be personally served on all parties. However, we seek comment on whether to permit facsimile service of a petition or reply, followed by mailing a copy, as an alternative to personal service to parties other than the Commission.

7. Finally, Section 1.773 contains various designations for petitions against tariff filings, for example, labeling them as "petitions seeking suspension or rejection of a new tariff filing" or as "petitions seeking suspension and investigation, or rejection of a new or revised tariff filing." In order to maintain consistency throughout the rule, we believe we should modify the current text to uniformly designate petitions as "seeking investigation, suspension, or rejection of a new or revised tariff filing."

8. We seek comments on this proposal, and invite parties to submit alternative proposals.

V. REGULATORY FLEXIBILITY ACT INITIAL ANALYSIS

9. **Reason for action.** The Commission is issuing this Notice of Proposed Rulemaking to seek comment regarding adjustment of the pleading cycle for petitions to investigate, suspend, or reject tariffs filed with the Commission on 14 days' notice.

10. **Objectives.** The objective of this Notice of Proposed Rulemaking is to provide the Commission additional time to review petitions against tariffs filed on 14 days' notice.

11. **Legal Basis.** Sections 1, 4(i), 4(j), 201-205, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 303(r).

12. **Description, potential impact, and number of small entities affected.** The proposed amendments to Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, mandate that petitions to investigate, suspend, or reject a tariff filing made on 14 days' notice be filed within six calendar days after the date of the tariff filing. The carrier's reply to these petitions must be filed within three calendar days after the petition is served. Intermediate holidays are counted during both filing periods. The amendments also require the petition and reply to be personally served on all parties. Small entities should experience no significant economic impact from this minor rule adjustment.

13. **Reporting, recordkeeping, and other compliance requirements.** The proposed rules impose no reporting requirements and no new recordkeeping requirements.

14. **Federal rules which overlap, duplicate, or conflict with the Commission's proposal.** None.

15. **Any significant alternatives minimizing impact on small entities and consistent with stated objectives.** None.

16. **Comments are solicited.** We request written comments on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on other issues in this Notice of Proposed Rulemaking, but they must have a separate and distinct heading designating them as Responses to this Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. See 5 U.S.C. § 601, et seq.

VI. EX PARTE REQUIREMENTS

17. **Ex Parte Rules -Non-Restricted Proceeding.** This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

VII. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described above, and that COMMENT IS SOUGHT on these proposals.

19. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, comments SHALL BE FILED with the Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before **July 23, 1992**. Reply comments should be filed no later than **August 7, 1992**. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties should file

⁹ We also propose the appropriate corresponding change to Section 1.4(g) of the Commission's Rules, 47 C.F.R. § 1.4(g). See

appendix.

two copies of any such pleadings with the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street, N.W., Washington, D.C. Parties should also file one copy of any documents filed in this docket with this Commission's copy contractor, Downtown Copy Center, Room 246, 1919 M Street, N.W., Washington, D.C. 20554.

20. IT IS FURTHER ORDERED that the Secretary shall mail a copy of this Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Donna R. Searcy
Secretary

APPENDIX

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

Part 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1--PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows: Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.4 is amended by revising paragraph (g) introductory text to read as follows:

§ 1.4 Computation of Time

(g) Unless otherwise provided (e.g. § 1.773 of the Rules), if the filing period is less than 7 days, intermediate holidays shall not be counted in determining the filing date.

3. Section 1.773 is amended by revising paragraph (a)(1), the first sentence of paragraphs (a)(1)(i) and (a)(2); redesignating paragraphs (a)(2)(i) through (iii) as paragraphs (ii) through (iv) and revising them; then adding new paragraph (a)(2)(i); adding paragraph (a)(4); redesignating paragraphs (b)(1)(i) through (iv) as (ii) through (v) and revising them, except in paragraph (b)(1)(v) only the last sentence is revised; then adding new paragraph (b)(1)(i); and revising paragraphs (b)(2) and (c) to read as follows:

§ 1.773 Petitions for suspension or rejection of new tariff filings.

(a) *Petition-(1)Content.* Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing or any provision thereof shall specify its Federal Communications Commission tariff number and carrier transmittal number, the items against which protest is made, and the

specific reasons why the protested tariff filing warrants investigation, suspension, or rejection under the Communications Act. No petition shall include a prayer that it also be considered a formal complaint. Any formal complaint shall be filed as a separate pleading as provided in § 1.721.

(i) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing or any provision of such a publication, must specify the pertinent Federal Communications Commission tariff number and carrier transmittal number; the matters protested; and the specific reasons why the tariff warrants investigation, suspension, or rejection. * * *

(2) *When filed.* All petitions seeking investigation, suspension, or rejection of a new or revised tariff filing shall meet the filing requirements of this paragraph. * * *

(i) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be filed and served within 6 days after the date of the tariff filing.

(ii) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 15 but less than 30 days notice shall be filed and served within 7 days after the date of the tariff filing.

(iii) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 30 but less than 90 days notice shall be filed and served within 15 days after the date of the tariff filing.

(iv) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 90 or more days notice shall be filed and served within 25 days after the date of the tariff filing.

(4) *Copies, Service.* An original and 4 copies of each petition shall be filed with the Commission and separate copies served simultaneously upon the Chief, Common Carrier Bureau, and the Chief, Tariff Division. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be personally served on the filing carrier. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 15 or more days notice may be served on the filing carrier by mail.

(b)(1) * * *

(i) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be filed and served within 3 days after service of the petition.

(ii) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 15 but less than 30 days notice shall be filed and served within 4 days after service of the petition.

(iii) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 30 but less than 90 days notice shall be filed and served within 5 days after service of the petition.

(iv) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 90 or more days notice shall be filed and served within 8 days after service of the petition.

(v) * * * The time for filing such a consolidated reply will begin to run on the last date for timely filed petitions, as fixed by (a)(2)(i)-(iv) of this section, and the date on which the consolidated reply is due will be governed by (b)(1)(i)-(iv) of this section.

(2) *Computation of time.* Intermediate holidays shall be counted in determining the 3-day filing date for replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice. Intermediate holidays shall not be counted in determining filing dates for replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 15 or more days notice. When a petition is permitted to be served upon the filing carrier by mail, an additional 3 days (counting holidays) may be allowed for filing the reply. If the date for filing the reply falls on a holiday, the reply may be filed on the next succeeding business day.

(c) *Copies, Service.* An original and 4 copies of each reply shall be filed with the Commission and separate copies served simultaneously upon the Chief, Common Carrier Bureau, and the Chief, Tariff Division. Replies responding to a new or revised tariff filing made on less than 15 days notice shall be personally served on the petitioner. Replies responding to a new or revised tariff filing made on 15 or more days notice may be served on petitioner by mail.